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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Creation of Event Radio Services

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File No. RM-11501

FILED/ACCEPTED

NOV 17 2008

Federal Communications Commission
Office of the Secretary

To: The Commission

STATEMENT OF
NATIONAL PUBLIC RADIO, INC.

Introduction

Pursuant to Section 1.405 of the Commission's Rules, 47 C.F.R. § 1.405, National Public Radio, Inc. ("NPR") hereby submits its Statement in opposition to the above-referenced petition for rulemaking to establish an event radio service.¹

NPR is a non-profit membership corporation that produces and distributes noncommercial educational ("NCE") radio programs through more than 800 NCE radio stations nationwide. In addition to broadcasting award-winning NPR programming, including *All Things Considered*®, *Morning Edition*®, and *Talk of the Nation*®, NPR's member stations are significant producers of news, information and cultural programming. NPR also operates the Public Radio Satellite Interconnection System and provides representation and other services to its member station licensees.

¹ See Petition for Rulemaking, RM-11501, filed Oct. 3, 2008 [hereinafter "Petition"]. See Public Notice, Report No. 2877, File No. RM-11501, Oct. 16, 2008.

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Summary

The Petition proposes the creation of a new service of radio stations to operate at significant power levels on an ad hoc basis at indoor and outdoor events of indeterminate size throughout the country. Though the proposal is audacious in size and scope, the details are vague and conflicting in important respects, particularly concerning the technical aspects of the service. The Petition nonetheless envisions limited protection of existing full service stations, a streamlined certification process for approving the stations, no public interest obligations, and operation throughout the FM band, including the portion reserved for NCE use, without satisfying the NCE criteria. In an increasingly congested spectrum environment in which full service FM stations are already confronting technical challenges as they attempt to transition to HD Radio, we think there is little merit to the Petition. Accordingly, the Commission should deny the Petition and decline to initiate a rulemaking proceeding.

Argument

1. The Petition fails to propose the rules and rule amendments that would be required to establish the proposed event radio station service. The Commission's rules require that a petition for rulemaking "set forth the text or substance of the proposed rule, amendment, or rule to be repealed." 47 C.F.R. § 1.401(c). In this case, it is not simply a matter of technical noncompliance with the Commission's pleading rules. To the contrary, the failure to set forth the proposed rules and rule changes, or to define their substance with any degree of precision, underscores the inchoate nature of the proposal.

On the critical issue of power levels, one is left with little idea of what the maximum power limit would be in any given circumstance. The Petition first states that "[t]he Petitioner proposes 10 watts as the maximum power level permissible under Subpart N for all venues with

the exception of golf courses (or other large outdoor venues), for which 25 watts is the proposed limit.² The Petition then suggests an unspecified process of "case-by-case determinations" to permit licensees to exceed the 10 watt maximum in "special circumstances" apparently defined solely by the nature of the event.³ The Petition concludes by stating that "it would be prudent for the Subpart N guidelines to specify a 10 watt limit to minimize potential interference."⁴

With respect to possible interference to other broadcast services, the Petition simply asserts that "10 watts is low enough that it [sic] is unlikely to cause interference" and "the procedures provided by the rules for reporting and correcting interference would remain unchanged."⁵ This, after suggesting that licensees could operate with 25 watts, not 10 watts, that protection is only guaranteed to other co- and first-adjacent FM stations, and without specifying what procedures for reporting and correcting interference are contemplated or what Petitioner means when it states that those procedures would remain "unchanged."⁶

Even if these general statements could be reconciled, they mask significant regulatory and policy issues associated with the authorization of a low power, event broadcasting service. The Petition therefore provides an inadequate basis on which to initiate a rulemaking proceeding.

2. The Proposed Service Does Not Qualify For Operation In The Reserved Portion of the FM Band. The Petition does not specify frequencies for the proposed event radio service,

² Petition at 7.

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

but simply proposes operation in the "FM band."⁷ Even if the Commission were to initiate a rulemaking proceeding to consider the Petition, the proposed service must be excluded from the spectrum (Channels 201-220) reserved exclusively for NCE stations.

To qualify to operate an NCE station, an applicant must meet specific criteria governing the type of entity and the nature of the proposed service. Thus, an applicant for a reserved frequency must be an educational institution or organization.⁸ Educational organizations must further demonstrate that they have an educational goal and are committed to the advancement of an educational program.⁹ Nowhere does the Petition propose to limit the potential pool of applicants to entities that would satisfy this criteria, at least with respect to the reserved NCE FM channels.

Even if the Petition did, moreover, licensees in the reserved FM band are required to furnish a noncommercial educational broadcast service.¹⁰ Although the Petition is vague in explaining the nature of the proposed service, merely transmitting live play-by-play descriptions of professional sporting events would not qualify as an educational service.¹¹

The exclusive reservation of frequencies in the FM band for noncommercial educational use made the current system of nationwide, locally-oriented public radio stations possible.¹²

⁷ Id. at 1 & 3-4.

⁸ See 47 C.F.R. § 73.503; 43 Fed. Reg. 30,842, 30,844-45 (July 18, 1978) (Appendix).

⁹ See 43 Fed. Reg. at 30,845.

¹⁰ See 47 C.F.R. § 73.503(d).

¹¹ See Petition at 2.

¹² See Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations, 69 F.C.C.2d 240, 240-241 (1978).

Since the initial reservation of frequencies, the Commission has consistently sought to encourage the development of public radio service.¹³ To that end, the Commission has resisted efforts to dilute the concept of noncommercial educational broadcasting by permitting other uses of reserved channels.¹⁴ The Commission should once again refuse to permit a commercial use of the reserved spectrum and, accordingly, exclude the proposed service, if authorized at all, from the reserved noncommercial FM band.

3. There would likely be substantial interference to full service broadcast stations and significant administrative costs associated with enforcing even the most basic regulatory requirements. As noted above, the Petition proposes only to protect co- and first-adjacent FM stations,¹⁵ even though the Commission's current Rules protect stations operating on co-, first-, second- and third-adjacent channels from new station applications, including 10 watt low power FM ("LPFM") stations.¹⁶ While the Petition contemplates requiring event radio station applicants to obtain the consent of second- and third-adjacent FM stations to accept predicted interference, the Commission has long disfavored such arrangements,¹⁷ and, in this case, the

¹³ See Amendment of Part 74 of the Commission's Rules to Provide for Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators, 71 R.R.2d 160, 162 (1992).

¹⁴ See Revision of FM Broadcast Rules, Particularly as to Allocation and Technical Standards, 33 F.C.C. 309, 333-34 (1962); see also Deletion of Noncommercial Reservation of *16, 11 FCC Rcd 11700 (1996).

¹⁵ Petition at 7.

¹⁶ See 47 C.F.R. § 73.807 (minimum distance separation requirements for 100 watt and 10 watt LPFM stations).

¹⁷ See In the Matter of 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rulemaking, 13 FCC Rcd 14849, at ¶ 7 (1998).

absence of a consent would not preclude the granting of the event radio station application.¹⁸

The interference protection proposed in the Petition is plainly inadequate, particularly given the significant power levels at which the event radio stations would be authorized to operate.

More generally, radio reception is an inherently probabilistic phenomenon. At line-of-sight FM frequencies, signal strengths commonly vary by factors of 100 to 1000 within a few feet of the same receiving location. This highly volatile signal variation is due to everyday terrain reflection and obstruction characteristics at individual locations, characteristics especially likely to be found at outdoor event venues such as golf courses. Only the lack of competing signals keeps the receivers "locked" to the protected channel of the tuned-to broadcast station aided by the "capture effect" of the FM receiver's limiter. The presence of low levels of adjacent channel interference, even operations at the most modest power levels, could disrupt reception for listeners within a wide zone.

Interference in this case is also likely to occur because the Petition proposes to avoid the normal engineering review that occurs when a station proposes to establish or change its basic technical operations.¹⁹ Instead, the Commission would grant an application if the applicant certifies that all elements of "a clear and concise checklist" are satisfied.²⁰ Moreover, the circumstances associated with low power broadcast transmissions from particular "events" will be impossible to predict for purposes of establishing the event radio service rules.²¹ Thus, the

¹⁸ Petition at 8.

¹⁹ See id. at 5

²⁰ See id.

²¹ See id. at 8 ("The duration of ERS licenses should be flexible to accommodate coverage of a variety of events, from two hour basketball games to tournaments spanning several weeks.").

malleability of the critical term "event" poses a significant challenge to the Commission's ability to prevent harmful interference to full service broadcast stations and, in general, to administer the service.

4. The Petitioner has failed to articulate the public interest benefits associated with the proposed service. According to the Petition, the proposed event radio service "would provide an invaluable service to the public interest" in the following ways:

- "enabling event attendees to follow action closer than ever before through real time broadcasts."²²
- "provid[ing] fans the opportunity to listen to the live radio play-by-play broadcast of a game synched perfectly to the action."²³
- "creating a reliable means of communicating emergency safety messages to a large number of people."²⁴

At the same time, the event radio stations would not be subject to any public interest obligations, ownership restrictions, or any other Commission Rules "grounded in public policy."²⁵

With regard to providing broadcast coverage of live events and emergency and other public safety information to an event's attendees, full service television and radio stations, not to mention public address announcers, have long provided such services. The Petitioner has not offered any evidence to suggest how the additional presence of low power broadcast facilities

²² Id. at 1.

²³ Id. at 2.

²⁴ Id.

²⁵ Id. at 10.

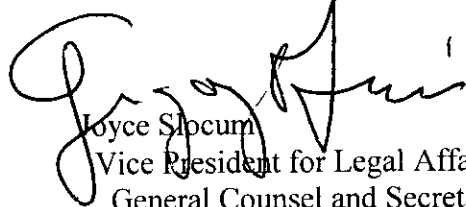
would enhance the experience for an appreciable portion of the public.²⁶ It also defies common sense to tout the proposed service as providing invaluable service to the public interest when the proposed event radio stations would bear no meaningful public interest obligations. By failing to explain how the proposed service would serve the public interest in a meaningful way, the Petition has not justified the initiation of a rulemaking proceeding to establish a new event radio service.

Conclusion

For the foregoing reasons, the Commission should deny the Petition.

Respectfully submitted,

NATIONAL PUBLIC RADIO, INC.



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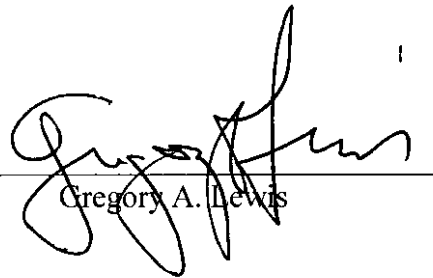
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²⁶ See 47 C.F.R. § 1.401 ("The petition shall set forth . . . all facts, views, arguments and data deemed to support the action requested.").

CERTIFICATE OF SERVICE

I, Gregory A. Lewis, hereby certify that a copy of the foregoing Statement of National Public Radio, Inc. was sent this 17th day of November, 2008, by first-class U.S. mail, postage prepaid, to the following:

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